

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Panu Korhonen, et al.
Title: USER INTERFACE FOR A PORTABLE
TELECOMMUNICATION DEVICE
Appl. No.: 10/509,528
Filing Date: 9/24/2004
Examiner: Angelica Perez
Art Unit: 2618
Confirmation Number: 2810

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant is in receipt of the Notice of Allowance for the above-captioned application. Applicant disagrees with the Determination of Patent Term Adjustment (PTA) under 35 U.S.C. § 154(b) and presents the following facts per the procedure set forth in 37 C.F.R. § 1.705(b) to support their contention that the patent term adjustment should be 582 days instead of 319 days as calculated by the United States Patent and Trademark Office (PTO).

The Patent Office determined that the patent was entitled to 319 days of PTA. Applicants believe that this PTA determination was made in accordance with the "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods

of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 582 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	680 days
(b) Total Applicant delay:	98 days
Final PTA Determination:	582 days

Applicants therefore respectfully request that the patent be accorded 582 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.


However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date March 27, 2009

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By



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Patent Term Adjustment Calculation System

Docket Number: 088245-0110
 Application Number: 10/509528
 Patent Number: N/A

Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Priority Date	03/26/2002	-913		
International Filing Date	03/05/2003	-569		
National Stage Entry (All 371(c) Requirements Met)	09/24/2004	0		
PCT National Stage Commencement Date	09/24/2004	0		
14 month From Application date	11/24/2005	426		
Non-Final Office Action	07/31/2006	675	249	
Non-Final Office Action + 3 months	10/31/2006	767		
Non-Final Office Action Rsp. Rcv'd at PTO	02/05/2007	864		97
Final Office Action	04/20/2007	938		
Notice of Appeal Received at PTO	07/20/2007	1,029		
Appeal Brief Received at PTO	07/20/2007	1,029		
3 Year Period Starts	09/24/2007	1,095		
Appeal Brief Filed + 4 months	11/20/2007	1,152		
Non-Final Office Action	05/06/2008	1,320	(168)	
Non-Final Office Action Rsp. Rcv'd at PTO	06/02/2008	1,347		
Final Office Action	08/27/2008	1,433		
Final Office Action Response Received at PTO	09/26/2008	1,463		
Advisory Action	10/09/2008	1,476		
Final Office Action + 3 months	11/27/2008	1,525		
Request For Continued Examination	11/28/2008	1,526	431	1
3 Year Period Stopped	11/28/2008	1,526		
Notice of Allowance	12/31/2008	1,559		
Projected Patent Grant Date	07/14/2009	1,754		
		Totals:	680	98
		PTA:	582	

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